

EXHIBIT 16

Hunters Capital, LLC v. City of Seattle

Emmanuel Arhu

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HUNTERS CAPITAL, LLC, et al.,)	
)	
Plaintiff,)	
)	
vs.)	No. 20-cv-00983
)	
CITY OF SEATTLE,)	
)	
Defendant.)	

VIDEOTAPED VIDEOCONFERENCE DEPOSITION
UPON ORAL EXAMINATION OF
EMMANUEL ARHU

Seattle, Washington

(All participants appeared via videoconference.)

DATE TAKEN: MARCH 3, 2022

REPORTED BY: CINDY M. KOCH, RPR, CRR, CCR #2357

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1 don't know which particular settings you're asking
2 about.

3 Q. Okay. Well, I'm asking, first of all, whether
4 before you transferred the data over to the new phone,
5 whether you checked any -- any of the settings that were
6 on -- on the phone.

7 A. No.

8 Q. Okay. And after you transferred the data over
9 to the new phone, did you check any of the settings on
10 the new phone?

11 A. Yes. Some of the settings, I checked settings,
12 making sure that the backup was turned on, if -- because
13 there are certain settings that we think it's helpful
14 for the user, so we would check that, and that backup is
15 one of them.

16 Q. So -- so you checked the backup -- whether the
17 backup was turned on when -- when the phone was restored
18 in July of 2020 --

19 A. If --

20 (Simultaneous cross-talk.)

21 A. -- over, I-- yeah, I did that.

22 Q. I'm sorry --

23 THE COURT REPORTER: I'm sorry. You're
24 speaking at the same time. So --

25 MR. REILLY-BATES: Yeah. Let me --

1 THE COURT REPORTER: -- I don't have the
2 full question, and I don't have the beginning of the
3 answer.

4 BY MR. REILLY-BATES:

5 Q. Yeah. Let me -- let me rephrase the question.

6 So -- so in July of 2020, when you replaced the
7 phone, after you transferred the data over, you made
8 sure that the iCloud backup setting was turned on on the
9 mayor's phone?

10 A. That's correct.

11 Q. And did you also make sure that the Messages in
12 iCloud setting was turned on?

13 MR. CRAMER: Objection. Form.

14 A. Sorry. The Messages in iCloud setting?

15 BY MR. REILLY-BATES:

16 Q. Yes. Did you -- did you also make sure that
17 the Messages in iCloud setting was turned on --

18 A. Yes.

19 Q. -- before you gave the phone back to the mayor?

20 A. Yes.

21 Q. And I apologize, Mr. Arhu -- or Emmanuel. I
22 should have given you this instruction before we got
23 started, but it's important, because of the remote
24 technology, that we make sure not to speak over each
25 other. And so I will try to -- to -- to not talk while

1 something that we used to help ourselves and update as
2 we go on, but I don't -- I don't know if you would call
3 that policy, something that we put together ourselves.

4 BY MR. REILLY-BATES:

5 Q. Okay. Was that something that was written down
6 in a -- a checklist or a document?

7 A. Yeah.

8 Q. Yes? Okay.

9 And where -- where would that have been kept?
10 Was that something on ShareFile, or SharePoint?

11 A. Yes.

12 Q. Okay. And can you recall, as best as you can,
13 what -- what that policy required regarding replacement
14 of a phone or a mobile device?

15 A. Again, so that's a -- I'll say it's a standard
16 operating procedure. So it helps us with pretty much --
17 it's updated -- we keep updating that, but it was a
18 process of how to do things, so how to do something -- a
19 backup, or how to restore a phone from one device to
20 another.

21 Q. Okay.

22 A. And as our technology changes, we keep that up
23 to date as we can.

24 Q. In 2020, in July of 2020, to the best of your
25 recollection, can you tell me what -- what that

1 checklist or policy had in it? What were the steps that
2 you should -- were required to take?

3 A. In what scenario?

4 Q. Regarding the replacement of -- of an iPhone.

5 A. So -- okay. That would require have -- if you
6 have both devices, having -- creating a -- maybe a
7 backup for us to start with so as to have something to
8 fall back on. And then --

9 THE COURT REPORTER: I'm sorry. I didn't
10 understand a word there.

11 A. I'm saying creating a backup to have something
12 to fall back on, and then with -- since we're dealing
13 with Apple devices, Apple has a built-in tool that helps
14 to copy content from one device to another.

15 Pretty much you turn on the new phone, and then
16 there's a prompt that comes on. You can hold it over
17 the old phone, and that begins -- there's prompts to
18 follow on the screen, of course. I can't remember all
19 of that.

20 Q. Okay. What next?

21 A. So when the copy completes, there's also a
22 process of checking to make sure that the data is
23 correct and you have both -- the application that you
24 want to check on both phones, just make sure the
25 applications match up, and then also there are a few

1 contents that you check from -- with -- in that respect
2 you just have to -- what we do is we put the phones side
3 by side, and then check to make sure that the contents
4 on each device is the same.

5 Q. Okay. So yeah, how do you -- how do you --
6 what -- what types of data do you check and what -- what
7 content do you check typically, or -- as part of this
8 policy?

9 MR. CRAMER: Objection. Form.

10 Go ahead.

11 A. So what type of data specifically would be
12 con- -- contacts and photos, videos, text messages, and
13 whatever applications that the user has.

14 BY MR. REILLY-BATES:

15 Q. Okay. With the text messages, do you -- do you
16 look at the oldest message and the most recent message
17 to confirm that you have the full range?

18 A. That's correct because, for example, the
19 contact will give you a number, you can see that there
20 is 500 contacts, for example, and you can match up to
21 the other one.

22 But for text messages, the only way is to look
23 at the actual messages, matching the first, which is one
24 on the top, and then the last one at the bottom.

25 Q. Okay. Are there any other steps that you can

1 think of that you would take before you give the phone
2 back to the user?

3 A. Any other steps -- enabling the backup, iCloud
4 backup.

5 Q. Okay. Would you also enable Messages in
6 iCloud?

7 A. Yes. But again, that's also -- because that
8 requires Wi-Fi to be on. So if you're on your -- what
9 is it? -- the mobile data, that would not back up.

10 Q. Okay. So tell me about the early July of 2020,
11 what -- when you first learned that the mayor was having
12 a problem with her phone. How did you learn that the
13 mayor was having a problem with her phone?

14 A. So I believe Regi put in the order because the
15 mayor had dropped her phone. The screen cracked. And
16 so the order came in to our supply room, and then they
17 called me to issue the new phone to the mayor.

18 So my process would be calling Colleen, or
19 getting in touch with Colleen to set up a date or a time
20 that I could pick up the phone. So that was the time
21 that I came in to pick up the phone to do the restore
22 for her.

23 Q. Okay. So -- so did -- did Regi make the
24 decision to -- to replace the -- the old iPhone, or was
25 that something that you also participated in?

1 messages on -- on July 7th and July 8th?

2 A. Yes.

3 Q. Scroll -- please scroll down to the bottom of
4 the first page of SEA_00145708, where Regi writes, "It
5 has arrived - please let us know when she can give up
6 her phone for a few hours so we can back up/restore data
7 to the new phone."

8 Do you see that?

9 A. Yeah.

10 Q. So was July 7th when -- when you received the
11 new phone?

12 A. Yeah, so I don't -- I don't have the exact
13 timeline or remember, but yeah, according -- according
14 to this, it -- that's about when the phone came in,
15 yeah.

16 Q. And so your plan was to -- to back up and
17 restore this phone per the usual procedures that were
18 followed by you and Regi; right?

19 A. That's correct.

20 Q. And did you, in fact, make a -- a backup of --
21 of the mayor's phone?

22 A. I remember starting -- starting a backup.
23 Again, with the -- the phone that she has is a -- I
24 think it was 128 gig, but iCloud backup storage is also
25 5 -- just 5 gig. So I remember starting a backup. I

1 can't tell whether that completed or not. But I didn't
2 end up using that backup because I did the direct
3 phone-to-phone copy. So, yeah, I didn't need a backup,
4 so I can't tell if that completed or not.

5 Q. So -- but before you -- you -- you used the
6 phone-to-phone contact, did you make a backup of the
7 cracked screen iPhone 8 Plus to make sure that there
8 would be a copy of the mayor's data after you
9 transferred it to the new phone?

10 MR. CRAMER: Objection. Form, asked and
11 answered.

12 A. No, not that I recall.

13 BY MR. REILLY-BATES:

14 Q. Okay. So you don't recall making a backup
15 before you did the transfer; correct?

16 A. I don't recall that correctly.

17 Q. Did you -- have you ever made a -- a backup
18 using iTunes, like a computer iTunes, for the mayor's
19 phone?

20 A. No.

21 Q. Do you know whether the mayor ever made a
22 backup of her phone using iTunes?

23 A. Not that I'm aware of.

24 Q. Okay. So describe to me what the process --
25 what you did once the new phone came in on July 7th,

1 which is the -- it's called the quick start, which
2 allows you to directly copy a phone -- one from -- one
3 phone to another. And that -- we found that option to
4 be more reliable because it copies everything from the
5 phone, including the settings. And so that's the option
6 that I used to do the copy.

7 BY MR. REILLY-BATES:

8 Q. So -- so before -- before you did the quick
9 start, did you check to make sure -- did you examine
10 the -- the old iPhone 8 Plus with the cracked screen to
11 make sure that it had everything on it, or did you just
12 assume that it had everything that it needed to on it?

13 MR. CRAMER: Objection. Vague as to
14 "everything."

15 A. So whatever that was on the phone, I guess
16 my -- my goal that day was to give the mayor a copy of
17 whatever that was on her old phone. So apps that gets
18 installed, that's her apps, nothing that we adding to,
19 with the exception of what's the City of Seattle
20 applications that she uses.

21 Yeah, besides that, we just -- that's why we --
22 I go through to make sure that, for example, email, she
23 has email access, her emails are coming through; maybe
24 Teams to make sure that those apps all work on her
25 phone.

1 BY MR. REILLY-BATES:

2 Q. Okay. And so after you did the quick start and
3 transferred the data, what -- what did you do to make
4 sure that everything had transferred over and that the
5 settings were all correct?

6 MR. CRAMER: Objection.

7 A. So --

8 MR. CRAMER: Objection. Asked and answered.
9 Go ahead.

10 A. So after the transfer, I would go through the
11 standard things that we checked, again, which is the
12 contact; messages, making sure that was there; look at
13 the gallery, the pictures. That actually gives you a
14 number, so you can tell the number of pictures on here,
15 number of pictures on there. Yeah, those were the
16 physical -- visible things that I checked before handing
17 it back.

18 BY MR. REILLY-BATES:

19 Q. And I believe that you mentioned that you
20 checked to -- to make sure that iCloud backup was turned
21 on and that Messages in iCloud was turned on; correct?

22 A. That's correct.

23 Q. All right. Let's go back to Exhibit 2, the
24 Celebrite report, and we're going to go to Line 8562,
25 and I will share my screen so that you can get there,

1 having with -- with that new iPhone 11 that you had
2 helped her set up?

3 A. Not that I remember.

4 Q. Okay. So what is -- what -- what do you recall
5 about this particular issue that Regi was emailing you
6 about?

7 A. Yeah, it -- it looks like a contact issue
8 because we do have active sync, which is our City of
9 Seattle contacts. So her contacts are managed within
10 her email, and there's an option to change that to the
11 built-in phones contact or the active sync.

12 So I think on that day it was -- I think it was
13 not on the active sync, which is the contact that's
14 managed by Colleen for her. So it was switched.

15 Q. I see.

16 A. So I -- yeah, because I spoke to Colleen over
17 the phone and had her check that setting.

18 Q. So on July 21st you didn't actually go and take
19 a look at the phone, did you?

20 A. Not that I recall, no. It looks like, yeah, I
21 did talk to her on the phone.

22 Q. In --in late July 2020, did you have any
23 occasion to actually go and -- and look at the mayor's
24 phone and adjust any of the settings on the phone?

25 A. No, I don't recall ever going back for the

1 settings on the phone?

2 A. Not that I recall, no.

3 Q. Did she -- did anybody in the mayor's office
4 ever mention to you that -- in late July that somebody
5 had turned the 30-day keep message retention setting on
6 so that messages were being deleted?

7 MR. CRAMER: Object -- objection. Asked and
8 answered.

9 A. Not that I recall.

10 BY MR. REILLY-BATES:

11 Q. Okay. So now I'd like to switch gears and --
12 and talk about the -- the iPhone 8 Plus that you had
13 replaced. After you did the restore, what did you do
14 with the old iPhone with the cracked screen?

15 A. So I'm -- for our -- our policy, I guess --
16 yeah, our standard operating procedure, I just hold on
17 to it, and that's what we do pretty much with everyone
18 else in the City that we work on their devices. We hold
19 on to it for a few weeks just to make sure that
20 everything works for them, so -- in case they come back
21 to ask for something, we can go back and verify.

22 So I held on to it for, I believe, about four
23 weeks. That's what we normally do before wiping them.

24 Q. Okay. And so before you wiped it, did -- did
25 you ask for any permission to -- to wipe that phone?

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1 A. No, I did not.

2 Q. Did you tell anybody that you were going to do
3 that?

4 A. No, but when -- when I gave them the new phone,
5 I let them know that we -- we going to hold on to it for
6 a couple of weeks, so if they need anything they should
7 let us know.

8 Q. Okay. So -- so you told -- and who -- who did
9 you give --

10 A. Colleen.

11 Q. -- the new phone? Was that --

12 A. Colleen.

13 Q. -- Colleen?

14 MR. CRAMER: Wait. Let -- let him ask the
15 full question. I think you knew where he was going, but
16 let him get it out for --

17 THE WITNESS: Okay.

18 MR. CRAMER: -- the record.

19 BY MR. REILLY-BATES:

20 Q. So who did you give the new phone to in the
21 mayor's office?

22 A. I gave it to Colleen.

23 Q. And during this time period did you ever have
24 any direct communication with the mayor about any of
25 these phones?

1 A. No.

2 Q. And did Colleen tell you, when you gave her the
3 new phone, that -- that you needed to -- to hold on to
4 the -- the old phone?

5 A. No.

6 Q. And you told her that you were going to do a
7 factory reset of the old phone?

8 A. I did told her that, yeah, I'm going to have it
9 for a while, so if anything -- just to give them some
10 comfort that we holding on to it at least so they don't
11 feel like they're losing anything.

12 Q. Okay. And the decision that you made to
13 factory reset the phone, that wasn't pursuant to any
14 policy that the mayor's office has; that was just your
15 own personal decision; correct?

16 A. That's --

17 MR. CRAMER: Objection. Form.

18 Go ahead.

19 A. Yeah, that's not from the mayor's office.
20 That's our standard operating procedure how we -- before
21 we recycle a device we have to make sure that it's
22 wiped.

23 BY MR. REILLY-BATES:

24 Q. Okay. But normally you -- you give the --
25 the -- the person who had the phone the option of

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1 Objection. Foundation, calls for speculation.

2 MR. REILLY-BATES: Thank you, Mr. Arhu.

3 BY MR. REILLY-BATES:

4 Q. Okay. Now, I think we just touched on briefly
5 the fact that in -- in August of 20 -- August 21st of
6 2020, Michelle Chen started looking into the issue of
7 whether there were text messages on the mayor's phone.
8 And I'm not asking you to tell me anything that -- that
9 Michelle Chen told you because that -- that is
10 privileged, but do you recall her looking into that
11 issue?

12 A. Yes.

13 Q. And did you have any direct communication with
14 her?

15 A. Yes.

16 Q. Okay. And -- and how about, was Regi aware of
17 that issue?

18 A. Yes.

19 Q. Okay. Tell me about your conversations that
20 you had with Regi only about what the concern was about
21 the mayor's text messages.

22 A. So when we got to know that the messages were
23 not there, initially we just went through -- we thought
24 about if we -- could it have been something that we did
25 wrong, I in particular, because I did the back -- I did

1 the restore.

2 So we did some tests just to make sure that the
3 process that we've been using did not fail. And also we
4 started looking at efforts to try to recover anything
5 that was lost. And that included contacting Susy, who's
6 our wireless coordinator, to contact the carrier, the
7 mobile carrier, to see if they can recover any messages.

8 We also tried to back up and restore. That's
9 when we noticed there was no backup.

10 And also we did check with some of the people
11 in the mayor's office that do PDR requests to see if
12 they've ever connected the mayor's phone to their
13 computer to do a backup before.

14 Q. Okay. Anything else that you can remember?

15 A. And also, I guess, our in-house forensics
16 person also did try to do a recovery before Crypsis came
17 in.

18 Q. Gotcha. Tell me about the PDR folks. That
19 would be Stacy Irwin and Kim Ferreiro; right?

20 A. Yes.

21 Q. And what -- what did you talk to them about?
22 What was your conversation with them about?

23 A. I asked them if they've ever connected the
24 mayor's phone to their computer, or if they've ever
25 done -- they used an application to extract text

1 messages from -- they don't do a full backup, but they
2 use that application, which I believe the application
3 does a backup. So we asked them if they have any
4 recollection of having ever done that for the mayor's
5 phone between that time frame, and they said no.

6 I believe we also checked on their computers
7 for backups, and we didn't find any.

8 Q. Were you surprised that, as PDR officers, that
9 they hadn't looked for text messages from the mayor's
10 office in June and July of 2020?

11 MR. CRAMER: Objection. Form.

12 A. I don't know what the frequency of -- how often
13 they do backups for the mayor's phone. So yeah, that
14 could have been why they didn't have backups, but I
15 didn't -- I don't -- I don't know what their -- their
16 process is, how often they go back to take the mayor's
17 phone to do that work.

18 BY MR. REILLY-BATES:

19 Q. Okay. And tell me about your conversations
20 with Braden Heil, the in-house forensic investigator.
21 What did you discuss with him?

22 A. So we actually consulted him to help us to see
23 if he can recover anything from the deleted phone, the
24 wiped phone. And so, yeah, that's -- that's about it.
25 And we gave him the device.

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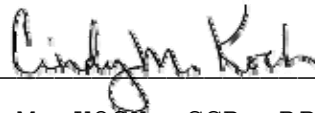
C E R T I F I C A T E

STATE OF WASHINGTON

COUNTY OF PIERCE

I, Cindy M. Koch, a Certified Court Reporter in
and for the State of Washington, do hereby certify that
the foregoing transcript of the deposition of Emmanuel
Arhu, having been duly sworn, on March 3, 2022, is true
and accurate to the best of my knowledge, skill and
ability.

IN WITNESS WHEREOF, I have hereunto set my hand
and seal this 9th day of March, 2022.





CINDY M. KOCH, CCR, RPR, CRR #2357

My commission expires:

JUNE 9, 2022

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ERRATA

CASE NAME: Hunters Capital, LLC v. City of Seattle

DATE TAKEN: 3/3/2022

WITNESS: Emmanuel Arhu

CORRECTIONS

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emmanuel Arhu

Signature of Deponent



DECLARATION

CASE NAME: Hunters Capital, LLC v. City of Seattle

DATE TAKEN: 3/3/2022

WITNESS: Emmanuel Arhu

I declare under penalty of perjury under the laws of the State of Washington that I have read my within deposition, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the ERRATA flyleaf page hereof.

emmanuel Arhu

Emmanuel Arhu

Signed on the 05th day of April, 2022.